REJECTIONS UNDER 35 U.S.C. § 102(b) AND 103(a)

The Examiner has maintained the rejection of claims 38-58, 60, 69, 78-79, 83-84, and 88-106 under 35 U.S.C. § 102(b) over EP 0 551 749 (Lee). The Examiner has also now rejected claims 38-58, 60, 69, 78-79, 83-84, and 88-106 under 35 U.S.C. § 103(a) over Lee. Because these rejections are similar, they will be discussed together.

In order to anticipate a claim, a reference must contain all elements of the claim. *See Hybritech v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986). To establish a prima facie case of obviousness, the prior art reference must teach or suggest all the claim elements. Moreover, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. M.P.E.P. § 2143 (8th ed. 2001).

The Examiner argues that Lee teaches Eastman AQ polymers which meet the limitation of a tacky polymer of the instant application. (Office Action dated July 30, 2002, at 3, citing Lee at page 3, lines 15-30.) The Examiner also argues that Lee teaches octylacrylamide/acrylates/butylaminoethyl methacrylate copolymers which meet the limitations of the fixing polymer of the instant application. (Office Action at 3, citing Lee, page 3, lines 30-37.) Finally, the Examiner argues that "[w]hile the reference does not disclose the Tg of the recited polymers, such property is inherent to the polymers." (Office Action at 3.) Applicants respectfully disagree with the Examiner's characterization of the reference and respectfully traverses the rejections.

Lee teaches that Eastman AQ polymers should have "a glass transition temperature ranging from about 50° C to about 70° C, preferably about 55° C." (Lee,

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page 3, lines 17-18.) For at least this reason, the Examiner's statement that the "reference does not disclose the Tg of the recited polymers" is incorrect. Rather, not only does Lee teach the Tg of its polymer, but such a teaching clearly refutes the Examiner's position that the claimed Tg would be inherent in Lee.

Moreover, the Examiner relies on Lee's teaching of a polyester identified as an ethylene diglycol/cyclohexanedimethanol/isophthalates/sulphoisophthalates resin, which is the Eastman AQ 55S, recited in the example. (Lee, page 3, lines 18-19, and Example 1 on page 4.) As shown by the attached product information brochure from Eastman, Eastman AQ 55S has a glass transition temperature of 55° C. (www.eastman.com/product_information/producthome.asp?product=1050.)

Contrary to the Examiner's assertion, Lee does not teach or suggest at least one tacky polymer having a glass transition temperature of less than 20° C, as presently claimed. Because Lee does not teach or suggest all the claim elements, Lee does not anticipate and would not have rendered obvious the claimed invention.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

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Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

Dated: October 30, 2002

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Attachment

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EASTMAN AQ 55S Polymer

EASTMAN AQ polymer 55S is a water-dispersible linear polyester. AQ 55S is an anionic polymer and is compatible with a broad range of anionic and nonionic products. *EASTMAN AQ* polymers are relatively high molecular weight, amorphous polyesters that disperse directly in water without the assistance of organic cosolvents, surfactants, or amines. *EASTMAN AQ* polymers differ chiefly in glass transition temperature (T_g) or softening point. The "dry" T_g of each polyester is indicated by its numerical designation. *EASTMAN AQ* 55S polymer has a T_g of 55.

Supplemental Documents

- Applications
- MSDS (USA-English)
- MSDS (All Regions)
- Technical Data Sheet
- Sales Specifications

Additional Publications

- CB-1 - Eastman Products for Cosmetics and Personal Care
- CB-41 EASTMAN AQ Polymers for Cosmetics and Personal Care
- CB-107 Sand Beige Makeup (oil-free)

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